IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH: NAGPUR
CRIMINAL APPLICATION NO.836 OF 2006

Shri Baban Motiramji Mohod
versus
State of Maharashtra and another

WITH
CRIMINAL APPLICATION NO.837 OF 2006

Shri Baban Motiramji Mohod
versus
State of Maharashtra and another

WITH
CRIMINAL APPLICATION NO.1273 OF 2006

Shri Baban Motiramji Mohod
versus
State of Maharashtra and another

WITH
CRIMINAL APPLICATION NO.1274 OF 2006

Shri Baban Motiramji Mohod
versus
State of Maharashtra and another

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Mr. P. A. Abhyankar, Advocate for applicant.[in all three cases]
Mr. Thakre, A. P. P. for respondent no.1[in all three cases]
Mr. Atul Chandurkar, Advocate for respondent no.2 [In all three cases]

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CORAM: S. R. DONGAONKAR, J.

DATE: 3.10.2006

ORDER

Rule. Rule made returnable forthwith. Heard by consent of parties finally.

All these applications are arising out of the matters under pectin 138 Negotiable Instruments Act between same parties. Hence heard together.

All relevant matters are between the same complainant and the accused and the prosecutions against the applicant are for the same offence i.e. under section 138 of the Negotiable Instruments Act. These matters pending in the courts of Chief Judicial Magistrate, Akola and 2nd Joint Civil Judge Senior Division & Judicial Magistrate First Class, Akola, details there of are as under:

Sr.	***Criminal application no in High Court***	***Criminal complaint no.***	***Pending before the court below***
1	836/2006	2321/2005	Chief Judicial Magistrate, Akola
2	837/2006	2689/2005	Chief Judicial Magistrate, Akola
3	1273/2006	2691/2005	Judicial Magistrate First Class, Akola
4	1274/2006	1745/2005	Judicial Magistrate First Class, Akola

2] These applications arise out of the matters mentioned above which are pending in the courts of Chief Judicial Magistrate Akola and Judicial Magistrate First Class, Court, Akola. Matters being under section 138 of the Negotiable Instruments Act. Learned counsel for the applicant Shri Abhyankar has contended that the cases have been filed by the non applicant no.2 i.e. complainant in the courts at Akola by taking shelter of jurisdiction obtained by presenting the cheques in the banks at Akola, where they were dishonoured and the trials at Akola are totally inconvenient to him as well as to the complainant. According to

him, earlier transactions were not at Akola and the submissions to that effect in application have not been denied by the non applicant. It would be sheer harassment to the accused if the trials are proceeded at Akola. Further it is contended that transactions for which cheques which are issued by the present applicant clearly show that the transactions would be subject to the jurisdiction of court at Nagpur. However, in the present case, cheques were intentionally deposited by the complainant in the banks at Akola, just to have the jurisdiction at Akola and thereby to harass the accused- applicant. In the application the details of the earlier transactions have also been given. In short the learned counsel for the applicant contends that it is convenient to both the parties if these matters are transferred to the courts at Nagpur for trial. He has relied upon the judgments reported in 2002 (4) Crimes 250 [Smt. Susheela B. S. ..vs.. Maroti Ferto Chemicals Ltd, Hospet].

3] He has also submitted that there would be no prejudice caused to the complainant if these cases are transferred to the court at Nagpur. In fact the complainant has not pleaded that any prejudice is going to cause to him, if these cases are transferred to Nagpur.

4] Learned counsel for the Respondent complainant relied on the contents of the complaint to submit that the complainant has his branch office at Akola and therefore, he had presented the said cheques at Bank at Akola. He had also taken me through the judgments of the Apex Court in 2000(1) Mh. L.J. 193 [K.Bhaskaran ..vs..Sankaran Vaidhyan Balan and

another] to contend that as the cheques were presented at Akola, territorial jurisdiction for the trial of these offences is the material aspect to be considered and therefore, the courts at Akola would have the jurisdiction over the matter. He has referred to judgment of the Apex Court reported in AIR 1982 Supreme Court 1558 [Baljit Singh and another ..vs.. State of J & K and others] to contend that the cases should be tried by the courts in whose jurisdiction the offences have been committed. He further submitted that in the present case, the bank witnesses are required to be examined and it would be inconvenient to them to attend the court at Akola as they are bank officials from Akola.

5] On perusal of the material available on record, it appears that applicant-accused as well as the complainant have their offices at Nagpur. The transactions for which the cheques were issued also appear to have taken place at Nagpur. However, the cheques appear to have been presented in the bank at Akola where they were dishonoured. In these circumstances, in the absence of material to show that the complainant is going to suffer any prejudice if the matters are transferred to court at Nagpur, it is obvious that convenience of the parties would be in getting the cases decided in the courts at Nagpur.

6] Although there can not be any dispute that normally, cases should be tried in the courts in whose territorial jurisdiction the offences have been committed, but the convenience of the parties also need to be seen more so in such cases.

7] Here is the case where the cheques are presented at Akola and

the contention of the complainant is that he has branch office at Akola and therefore, Akola Court has jurisdiction. No doubt the courts at Akola would have jurisdiction to try these cases, but the fact remains that no prejudice is going to cause to the complainant if these cases are transferred to Nagpur. On the contrary it would be convenient to both the parties if these cases are tried at Nagpur. The fact that the Bank Officials are required to be called as witnesses, may not have concluding impact on the matter as in view of the provisions of section 146 of the Negotiable Instruments Act, they may not be even required to be examined. Even otherwise that fact by itself would not be sufficient to reject this application, in as much as, in case of success, the complainant is likely to get the compensation to the suitable extent.

8] In these circumstances, therefore, the judgments relied upon by the complainant in support of his submission i.e. 2001 Mh.L.J. 193 K Bhaskaran ..vs.. Sankaran Vaidhyan Balan and another and AIR 1982 SC 1558 Baljit Singh and another ..vs.. State of J.K. and others, would not be attracted, as they deal with the aspect of jurisdiction of Courts which is undisputed in the present case.

9] Observations in 2002 (4) Crimes 250 [Smt. Susheel B.S. .vs.. Maruthi Ferto Chemicals Ltd. Hospet] do support the contentions of the applicant.

11] In my opinion in the present case, on facts and on considering the convenience of both the parties i.e. the applicant-accused, as well as

the complainant, particularly when the complainant is unable to show that any prejudice is going to be caused to him in case of transfer of these matters to the court at Nagpur, order of transfer of these cases to the court at Nagpur under section 407(1)(c)(2) is warranted.

12] Hence the Criminal Complaint Case No.s 2321/2005 & 2689/2005 pending before Chief Judicial Magistrate Akola and Criminal Complaint Case Nos., 2691/2005 & 1745/2005 pending before the Judicial Magistrate First Class, Akola are hereby ordered to be transferred to the court of Chief Judicial Magistrate, Nagpur, for disposal according to law. The trial Judges are directed to take appropriate action in these matters. The Chief Judicial Magistrate, Nagpur, on receipt of these cases shall be at liberty to assign these cases to any other Courts for disposal according to law, if required.

Rule is made absolute in the aforesaid terms.

JUDGE